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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

TESSA ZOLNIKOV,

Plaintiff,

vs.

NATIONAL BOARD OF MEDICAL
EXAMINERS,

Defendant.

CV-22-35-BLG-SPW-TJC

NBME'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), Defendant National Board of Medical Examiners (“NBME”) moves to dismiss the Complaint of Plaintiff Tessa Zolnikov (“Ms. Zolnikov”).

Ms. Zolnikov asserts two claims against NBME, one for violation of Section 504 of the Rehabilitation Act (“Rehabilitation Act”) (Count I of the complaint) and one for violation of Title III of the Americans with Disabilities Act (“ADA”) (Count II of the complaint). Ms. Zolnikov’s Rehabilitation Act claim fails because

she does not allege that NBME is the recipient of federal financial assistance within the meaning of the statute, or provides facts to support such an assertion. Her ADA claim fails because she seeks only monetary damages, which are not available under Title III of the ADA, and she has alleged no facts showing that she has a standing to pursue injunctive relief under the statute. The grounds for this motion are set forth more fully in the accompanying brief.

For the foregoing reasons, Ms. Zolnkov's complaint should be dismissed.

DATED this 27th day of April, 2022

Respectfully submitted,

s/ Mark D. Parker

Mark D. Parker

*Attorneys for National Board of Medical
Examiners*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following recipient on this 27th day of April, 2022, by placing a true and correct copy of same in the U.S. mail, postage prepaid:

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/s/ Mark D. Parker
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